

## **COPYRIGHT PROTECTION ASPECTS OF OTHER PARTY'S VIDEO GAME AS YOUTUBE CONTENT**

**Marnia Rani**

Law Studies Program, Raja Ali Haji Maritime University

E-mail : marniarani@umrah.ac.id

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Many other people's Works are used as a content by parties on the YouTube video sharing site. Be it music, songs, cinematographic works, even video games. Music is used as a background of video, songs are sung in many version, many cinematographic works are uploaded for free viewing, and video games are widely used as a content to give some tips for Gaming YouTuber. This phenomenon raises a legal issue, whether creating youtube content using other works can be called copyright infringement. This article specifically discusses about the legal aspects of copyright protection related to the use of video games as a content on YouTube video sharing sites. Video games as a YouTube content, are usually used by Content Creators on Youtube by taking a few game fragments to give some tips for gamers how to play the games. The legal problem is that the video game which they play is not theirs, it means the Author or Copyright Holder of the video game is not the person who uploaded the video game. Therefore, this article reviews Legal aspects of Copyright protection of video games have used as a content on the Youtube Video sharing site.

**Keywords: Copyright, Works, Video Games**

### **A. Preliminary**

The development of the digital world through electronic devices is increasingly inevitable. Almost all human activities today are disseminated through electronic-based media known as the internet. Who would have thought that in the era of the nineties we would be able to publish creative human works done by ourselves without working together with a production house.

In the nineties era, when someone wanted to become a singer, many singers really wanted a record label to offer him a cooperation agreement to become a famous actress. A talented person in the theater world, eager to play in a film produced by a well-known production house. A cartoonist or animator really wants his works to be printed and published by well-known publishers or even shown in the form of a film or television series.

Now this is no longer the case, anyone is free to express, publish and disseminate their own creative works through various online media which can be witnessed immediately all over the country. One of the most popular media currently is the Youtube video site. Talented people can immediately make creative videos without having to find a producer to finance the production process of their work.

The advantage for content creators who upload their creative works on Youtube is that the world

knows their talents and abilities. Another advantage, if the video is seen by many people (viewers) or their Youtube account is followed by many people (subscribers), Youtube will provide some compensation (donate) for the creative work of the video uploader (vlogger). This will certainly further motivate content creators to continue to be creative so that their videos can be liked by the viewing community on Youtube.

The description above is a positive impact of the development of the digital world. While the negative impact is that many YouTubers use other people's work as material to create content on Youtube. Many people use other people's songs for cover according to their own version. Publishing films or cinematographic works to gain a lot of viewers and / or subscribers. Some even use fragments of other parties' video games as content to provide tips on playing games excellently.

An example of a video game used by Youtuber Gaming Regie Prabowo or better known as MiaoAug, uses the PUBG game as content to provide tips on playing various types of games, such as PlayerUnknown's Battlegrounds and PUBG. Likewise with Youtuber gaming Afif Yulistian, who also provides tips on playing PUBG Mobile on Youtube accounts and other games too.

This raises its own legal problems, because the use of other people's work becomes Youtube content, it could be that the work made into that content contains copyright. As has been exemplified above, content creators who make video games as material for publication, are not their own games.

Based on these problems, the author intends to examine the legal aspects of copyright protection against the use of works belonging to other parties on Youtube accounts, especially video games.

## B. Discussion

Human creations are the result of human intellectual thought which is not easy to make. It is a time-consuming process and can be an inexpensive cost. Therefore, the state provides protection for various creative human works both in the Law which regulates Copyright and Property Rights in other industrial fields.

Copyright is defined in Article 1 Number 1 of Law Number 28 Year 2014 concerning Copyright (Copyright Law), which is the exclusive right of a creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. -invitation. This means that every copyright work that has been published as a real work has been protected by law, even though it has not been registered at the Office of the Ministry of Law and Human Rights.

Video games themselves fall within the scope of the Protection of the Copyright Law as stipulated in Article 40 Paragraph (1) letter r. Because video games are a type of work that is protected by law, their use by other parties must of course meet the conditions stipulated in the Copyright Law.

The use of video games by parties who are not creators or copyright holders of video games on the Youtube site is not inseparable from legal issues related to copyright infringement. Because every video game used by YouTubers Gaming, at certain times when it has many viewers and subscribers, content creators will get a number of compensation from Youtube or known as monetization.

When the content meets the requirements set by Youtube regarding the Monetization policy. Then Youtube will pay the content creators. When this payment occurs, the Creator or Copyright Holder has economic rights over the commercialization of the Work. Basically, Youtube currently has strict rules regarding monetization for YouTubers. Youtube still pays attention to the possibility that the content created by YouTubers meets the requirements

specified in Law Number 28 of 2014 concerning Copyright.

Youtube provisions remind content creators to ask permission from the Creator or Copyright Holder if the content they present contains copyright owned by other parties. The Youtube policy is basically an implementation

Article 9 Paragraph (3) of Law Number 28 Year 2014 Regarding Copyright provides that "Any person without permission from the Creator or Copyright Holder is prohibited from reproducing and / or Commercial Use of Works."

Youtube itself has Community Guidelines in order to provide rules for parties who use the Youtube site as a forum to broadcast their works. These guidelines specify that Youtube will deliver notification via email / notification on mobile and desktop, or channel settings of an account to parties that there is a Copyright violation. As a follow-up to a violation, Youtube usually takes action to remove the content in question.<sup>1</sup>

To protect various copyright works of certain parties, Youtube also applies the Principles of Use for Fair Interests or known as the "Fair Use Doctrine". This principle was originally rooted in American customary law (the Anglo-American common law tradition) which is also known as fair dealing as the "moral rights" of the copyright owner.<sup>2</sup>

This doctrine is basically adapted by YouTube from the existing copyright laws in the United States, namely the Digital Millennium Copyright Act.<sup>3</sup> The concept of fair use is contained in 1201 (c) (1) which determines that "Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title."

Budi Agus Riswandi defines that nothing in this paragraph should affect rights, compensation, restrictions or protection for copyright infringement, including fair use below. According to him, the fair use concept is only applied when a copyright infringement claim occurs.<sup>4</sup>

Youtube's policy for the application of the fair use concept itself, based on the provisions of the American Digital Millennium Act, YouTube will remove videos based on the request of certain parties if they receive a valid infringement notification and issue a "copyright strike" to the uploader, as well as user accounts that have received three reprimands. will be stopped.<sup>5</sup>

*Fair Use Doctrine* intended to balance the interests of the creator and the interests of society. Fair use is applied in matters of education, research, writing scientific papers, preparing reports and so on.<sup>6</sup>

This doctrine is also regulated in several articles in the Copyright Law. Article 44 Paragraph (1) of the Copyright Law provides that:

"The use, retrieval, duplication and / or alteration of a Work and / or Related Rights product in whole or in part is not considered a substantial copyright infringement if the source is mentioned or stated in full for the following purposes:

- a. education, research, writing scientific papers, preparing reports, writing criticism or reviewing a problem without prejudice to the reasonable interests of the Creator or Copyright Holder;
- b. security and governance, legislative and judiciary;
- c. lectures for educational and scientific purposes only; or
- d. performances or performances that are free of charge provided that they do not harm the reasonable interests of the Creator. "

Article 46 of the Copyright Law provides that:

- " (1) Reproduction for personal gain on a work that has been announced can only be made as much as 1 (one) copy and can be done without the permission of the creator or copyright holder.
- (2) Reproduction for personal gain as referred to in paragraph (1) does not include:
  - a. architectural works in the form of buildings or other constructions;
  - b. all or a substantial part of a book or musical notation;
  - c. all or a substantial part of the database in digital form;
  - d. except as referred to in Article 45 paragraph (1); and
  - e. Reproduction for personal gain, the implementation of which is contrary to the reasonable interests of the Creator or the Copyright Holder.

Elucidation of Article 44 Paragraph (1) Letter a of the Copyright Law explains that what is meant by "reasonable interest of an Author or Copyright Holder" is an interest based on balance in enjoying the economic benefits of a Work. "

Further provisions regarding fair use are also regulated in Article 9 (2) Berne Convention which

stipulates "It shall be a matter for legislation in the countries of the Union to permit the reproduction does not conflict with a normal exploitation. of the work and does not unreasonably prejudice the legitimate interests of the author. "

Based on the provisions of the Berne Convention, that reproduction of works is allowed in certain cases, as long as it does not exploit the work in question, and does not harm the legitimate interests of the author.<sup>7</sup>

According to Achmad Zen Umar Purba, the description of the fair use doctrine is that the community can freely use protected works, without exceeding the usefulness required for research, education and other purposes.<sup>8</sup>

Based on the provisions stipulated in the Copyright Law and the Bern Convention above, the use of other parties' copyright works in this case video games by parties who are not creators or copyright holders are displayed on Youtube, because their use is not in accordance with the provisions of Article 46 in conjunction with Article 44 of the Copyright Law, which is not for the purposes of education, research, writing scientific papers, compiling reports, writing criticism or reviewing a problem. For the purposes referred to in the Article, parties must only ask for permission and state the source of the Work taken (Author or Copyright Holder). Moreover, if its use is not for that purpose,

Apart from applying fair use doctrine, YouTube also has a policy that provides two types of licenses on its website, namely Copyright protection and Creative Commons BY (CC BY) protection. Copyright Protection for Video Uploaders on Youtube broadcasts, which is done by clicking on the link on the user's channel that says "Send Message," and asking the owner's permission to use their own content.<sup>9</sup>

If the content on YouTube is available under a Creative Commons BY (CC BY) type of license, then the content can be directly downloaded freely, edit and commercialize the content as explained by YouTube below:

"YouTube allows users to tag their videos with a Creative Commons BY (CC BY) 2 license. Then, these videos can be accessed by YouTube users for use, even commercially. By tagging your original video with a Creative Commons BY (CC BY) license, you give the entire YouTube community the right to reuse or edit the video. "<sup>10</sup>

Regardless of whether Youtube implements a copyright protection policy, in accordance with the

provisions of the Copyright Law, content creators on Youtube should, whether they have not received monetization or not, ask for permission when using video games owned by other creators or copyright holders.

Because the use of works belonging to other parties is not only related to the economic rights of the creators, but also the moral rights of the creators, which require the users to respect all forms of works that are obtained based on declarative principles.

### C. Conclusion

Copyright is indeed an intellectual property that is unique and different from intellectual property in the industrial field. The principle of copyright protection determines the existence of an announcement against a work in a real form, which in turn results in the emergence of legal protection for the work. Youtube, as a place or media for publication of Creations, which in this millennium era is popular with the community, must be careful in making policies or rules for its users so that they do not commit violations in the use of Codes belonging to other parties. Youtube's actions by applying the Principle of Use for fair use, as an effort to provide legal protection for copyrighted works of human children that are displayed on Youtube, one of which is the use of Video Games which are used by Gaming Youtubers as content on their YouTube accounts. The application of this principle is in line with the provisions of Law Number 28 of 2014 concerning Copyright. However, on Youtube, the application of this principle only starts when the content meets the requirements for payment (monetization), which requires Video Game users to enter into a license agreement with the Creator or Copyright Holder for the fulfillment of Economic Rights. Whereas copyright is not only related to economic rights, but there are also creator moral rights. Therefore,

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- <sup>6</sup> Muhamad Djumhana, p. 48.

- <sup>7</sup> Budi Agus Riswandi, p. 9.

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- <sup>9</sup> <https://support.google.com/youtube/answer/2797468?hl=en>, accessed on 28 September 2019 at 00:51 WIB.

- <sup>10</sup> *Ibid.*